

520 Rec'd PCT/PTO 02 FEB 2000

FORM PTO-1390
(REV 1-9-98)

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE

ATTY/RENEY'S DOCKET NUMBER

990667/RSB

U.S. APPLICATION NO. (If known, see 37 CFR 1.5)

09/403,940

INTERNATIONAL APPLICATION NO.
PCT/DE98/01172INTERNATIONAL FILING DATE
28 April 1998PRIORITY DATE CLAIMED
29 April 1997TITLE OF INVENTION: DEVICE FOR DETERMINING FLUCTUATIONS IN END EXPIRATORY GASES, METHOD
FOR DETERMINING FLUCTUATIONS IN RESPIRATORY METABOLISM AND THE USE OF SAID DEVICE.

APPLICANT(S) FOR DO/EO/US

Ludwig WILDT; Peter LICHT; Matthias MICHEL

Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:

1. This is a FIRST submission of items concerning a filing under 35 U.S.C. 371.
2. This is a SECOND or SUBSEQUENT submission of items concerning a filing under 35 U.S.C. 371.
3. This express request to begin national examination procedures (35 U.S.C. 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. 371(b) and PCT Articles 22 and 39(1).
4. A proper Demand for International Preliminary Examination was made by the 19th month from the earliest claimed priority date.
5. A copy of the International Application as filed (35 U.S.C. 371(c)(2))
 - a. is transmitted herewith (required only if not transmitted by the International Bureau).
 - b. has been transmitted by the International Bureau.
 - c. is not required, as the application was filed in the United States Receiving Office (RO/US).
6. A translation of the International Application into English (35 U.S.C. 371(c)(2)).
7. Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3))
 - a. are transmitted herewith (required only if not transmitted by the International Bureau).
 - b. have been transmitted by the International Bureau.
 - c. have not been made; however, the time limit for making such amendments has NOT expired.
 - d. have not been made and will not be made.
8. A translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).
9. An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)).
10. A translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)).

Items 11. to 16. below concern document(s) or information included:

11. An Information Disclosure Statement under 37 CFR 1.97 and 1.98.
12. An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.
13. A FIRST preliminary amendment.
- A SECOND or SUBSEQUENT preliminary amendment.
14. A substitute specification.
15. A change of power of attorney and/or address letter.
16. Other items or information:

(a) Copy of NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 USC 371
IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US),
Dated January 18, 2000

(b) RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER
35 USC 371 IN THE UNITED STATES DESIGNATED/ELECTED
OFFICE (DO/EO/US)

CERTIFICATE OF MAILING

I hereby certify this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on the date noted below.

*Richard S. Barth*Attorney: Richard S. Barth
Dated: January 24, 2000

17. The following fees are submitted:

BASIC NATIONAL FEE (37 CFR 1.492 (a) (1) - (5)):

Search Report has been prepared by the EPO or JPO \$840.00

International preliminary examination fee paid to USPTO (37 CFR 1.482) \$670.00

No international preliminary examination fee paid to USPTO (37 CFR 1.482) but international search fee paid to USPTO (37 CFR 1.445(a)(2)) \$760.00

Neither international preliminary examination fee (37 CFR 1.482) nor international search fee (37 CFR 1.445(a)(2)) paid to USPTO \$970.00

International preliminary examination fee paid to USPTO (37 CFR 1.482) and all claims satisfied provisions of PCT Article 33(2)-(4) \$ 96.00

CALCULATIONS PTO USE ONLY

ENTER APPROPRIATE BASIC FEE AMOUNT = \$

Surcharge of \$130.00 for furnishing the oath or declaration later than 20 30 months from the earliest claimed priority date (37 CFR 1.492(e)). \$

CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE
Total claims	- 20 =		\$ 18.00
Independent claims	- 3 =		\$ 78.00
MULTIPLE DEPENDENT CLAIM(S) (if applicable)			+ 260.00

TOTAL OF ABOVE CALCULATIONS = \$

Reduction of 1/2 for filing by small entity, if applicable. Verified Small Entity Statement must also be filed (Note 37 CFR 1.9, 1.27, 1.28). \$

SUBTOTAL = \$

Processing fee of \$130.00 for furnishing the English translation later than 20 30 months from the earliest claimed priority date (37 CFR 1.492(f)). \$

TOTAL NATIONAL FEE = \$

Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property \$

TOTAL FEES ENCLOSED = \$

Amount to be:	\$
refunded	\$
charged	\$

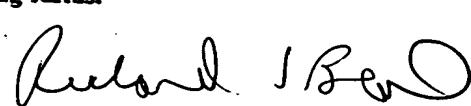
a. A check in the amount of \$ _____ to cover the above fees is enclosed.b. Please charge my Deposit Account No. _____ in the amount of \$ _____ to cover the above fees. A duplicate copy of this sheet is enclosed.c. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 06-1378. A duplicate copy of this sheet is enclosed.

NOTE: Where an appropriate time limit under 37 CFR 1.494 or 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the application to pending status.

SEND ALL CORRESPONDENCE TO:

FRISHAUF, HOLTZ, GOODMAN, LANGER & CHICK, P.C.
 767 Third Avenue - 25th Floor
 New York, NY 10017-2023
 Tel. No. (212) 319-4900
 Fax No. (212) 319-5101

Date: January 24, 2000


 Richard S. Barth
 NAME

28,180
 REGISTRATION NUMBER

Attorney Docket No. 990667/RSB

IN THE UNITED STATES PATENT,
AND TRADEMARK OFFICE

Applicant(s): Ludwig WILDT et al.

Serial No. : 09/403,940

Filed : October 29, 1999

For : DEVICE FOR DETERMINING
FLUCTUATIONS IN END
EXPIRATORY GASES, METHOD
FOR DETERMINING FLUCTUATIONS
IN RESPIRATORY METABOLISM AND
THE USE OF SAID DEVICE

Art Unit :

Examiner :

RESPONSE TO NOTIFICATION OF
MISSING REQUIREMENTS UNDER
35 USC 371 IN THE UNITED STATES
DESIGNATED/ELECTED OFFICE (DO/EO/US)

Assistant Commissioner for Patents
Washington, D.C. 20231

ATTENTION: BOX PCT

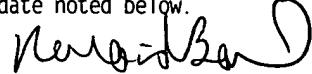
S I R :

This is responsive to the Patent Office NOTIFICATION OF
MISSING REQUIREMENTS UNDER 35 USC 371 IN THE UNITED STATES
DESIGNATED/ELECTED OFFICE (DO/EO/US) (Form PCT/DO/EO/905) mailed
January 18, 2000.

On January 12, 2000 an executed Declaration and an
originally executed Small Entity Statement were filed in the
Patent Office, along with a Second or Subsequent Submission
Transmittal Letter. A copy of the received postcard evidencing
receipt by the Patent Office is enclosed.

CERTIFICATE OF MAILING

I hereby certify this
correspondence is being
deposited with the United
States Postal Service as First
Class mail in an envelope
addressed to: Assistant
Commissioner for Patents,
Washington, D.C. 20231 on the
date noted below.



Attorney: Richard S. Barth

Dated: January 24, 2000

In the event that this Paper
is late filed, and the
necessary petition for
extension of time is not filed
concurrently herewith, please
consider this as a Petition
for the requisite extension of
time, and to the extent not
tendered by check attached
hereto, authorization to
charge the extension fee,
or any other fee required
in connection with this
Paper, to Account No. 06-1378.

It is respectfully submitted that all papers have been timely filed and that prosecution on the merits now proceed.

Respectfully submitted,



RICHARD S. BARTH
REG. NO. 28,180

FRISHAUF, HOLTZ, GOODMAN, LANGER & CHICK, P.C.
767 THIRD AVENUE - 25TH FLOOR
NEW YORK, NEW YORK 10017-2023
Tel. No. (212) 319-4900
Fax No. (212) 319-5101

RSB/ddf

Enclosures: (1) Copy of PTO NOTICE
mailed January 18, 2000

(2) Copy of postcard with PTO
date stamp of Jan. 12, 2000
thereon

09/40394



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: ASSISTANT COMMISSIONER FOR PATENTS
Box PCT
Washington, D.C. 20231

U.S. APPLICATION NO. 940

MICHEL

FIRST NAMED APPLICANT

ATTY. DOCKET NO.

990667/RSB

FRISHAUF HOLTZ GOODMAN LANGER & CHI
5071
767 THIRD AVENUE
25TH FLOOR
NEW YORK NY 10017-2023

INTERNATIONAL APPLICATION NO

PCT/DE98/01172

I.A. FILING DATE PRIORITY DATE

04/28/98 04/29/97

DATE MAILED

01/18/00

NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)

1. The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated Office (37 CFR 1.494). an Elected Office (37 CFR 1.495):

U.S. Basic National Fee.
 Copy of the international application in: a non-English language. English.
 Translation of the international application into English.
 Oath or Declaration of inventors(s) for DO/EO/US.
 Copy of Article 19 amendments.
 Translation of Article 19 amendments into English.
 The International Preliminary Examination Report in English and its Annexes, if any.
 Translation of Annexes to the International Preliminary Examination Report into English.
 Preliminary amendment(s) filed 29 Oct 1997 and _____
 Information Disclosure Statement(s) filed 29 Oct 1997 and 22 Nov 1997.
 Assignment document.
 Power of Attorney and/or Change of Address.
 Substitute specification filed _____.
 Statement Claiming Small Entity Status.
 Priority Document.
 Copy of the International Search Report and copies of the references cited therein.
 Other:

2. The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

a. Translation of the application into English. Note a processing fee will be required if submitted later than the appropriate 20 or 30 months from the priority date.
 The current translation is defective for the reasons indicated on the attached Notice of Defective Translation.

b. Processing fee for providing the translation of the application and/or the Annexes later than the appropriate 20 or 30 months from the priority date (37 CFR 1.492(f)).
 Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.
 The current oath or declaration does not comply with 37 CFR 1.497(a) and (b) for the reasons indicated on the attached PCT/DO/EO/917.

d. Surcharge for providing the oath or declaration later than the appropriate 20 or 30 months from the priority date (37 CFR 1.492(e)).

3. Additional claim fees of \$ _____ as a large entity small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due (37 CFR 1.492(g)). See attached PTO-875.

ALL OF THE ITEMS SET FORTH IN 2(a)-2(d) AND 3 ABOVE MUST BE SUBMITTED WITHIN ONE MONTH FROM THE DATE OF THIS NOTICE OR BY 21 OR 31 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

4. Translation of the Annexes **MUST** be submitted no later than the time period set above or the annexes will be cancelled. Note processing fee will be required if submitted later than 30 months from the priority date.
5. The Article 19 amendments are cancelled since a translation was not provided by the appropriate 20 (37 CFR 1.494(d)) or 30 (37 CFR 1.495(d)) months from the priority date.

Applicant is reminded that any communication to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above. (37 CFR 1.5)

A copy of this notice MUST be returned with this response.

Enclosed: PCT/DO/EO/917 Notice of Defective Translation PTO-875

FORM PCT/DO/EO/905 (December 1997)

Lemon Hunter
National Stage Processing

Telephone: (703) (703) 305-5888

RECEIPT ACKNOWLEDGED:

990667/RSB - Ludwig WILDT et al.
SN 09/403,940

TRANMITTAL LETTER, Executed Post-filed PCT
DECLARATION AND POWER OF ATTORNEY; Originally
executed STATEMENT CLAIMING SMALL ENTITY (a copy of
which was mailed on December 27, 1999);
CHECK FOR \$65 (Small Entity Fee for post-filing
Decl.), Ck. #77704

FCM/CERT. OF MAILING: JANUARY 10, 2000

RSB/ddf 418 Rec'd PCT/PTO 12 JAN 2000